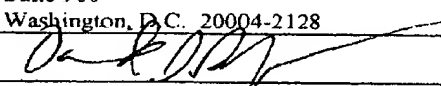
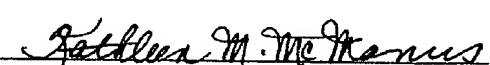


JAN 07 2005

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/817,797	
	Filing Date	03-27-2001	
	First Named Inventor	Michael HERMANN	
	Group Art Unit	2872	
	Examiner Name	Audrey Y. Chang	
Total Number of Pages in This Submission	8	Attorney Docket Number	741124-79

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Declaration and Power of Attorney <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Application Data Sheet <input type="checkbox"/> Request for Corrected Filing Receipt with Enclosures <input type="checkbox"/> A self-addressed prepaid postcard for acknowledging receipt <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1. Second Submission Under 37 CFR §1.114(a) 2. Declaration of Heinz P. Bloch
Remarks		<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees required or credit any overpayments to Deposit Account No. 19-2380 for the above identified docket number.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	David S. Safran, Reg. No. 27,997 Nixon Peabody LLP 401 9 th Street, N.W. Suite 900 Washington, D.C. 20004-2128
Signature	
Date	January 7, 2005

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]	
I hereby certify that this correspondence is being:	
<input type="checkbox"/> deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop _____, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450	
<input checked="" type="checkbox"/> transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306	
January 7, 2005 Date	 Signature Kathleen M. McManus Typed or printed name

W378897.1

JAN 07 2005

Docket No. 741124-79

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) Group Art Unit: 2872
Michael HERMANN)
) Examiner: Audrey Y. Chang
)
Application No.: 09/817,797) Confirmation No. 8356
)
Filed: March 27, 2001)
)
For: DEVICE FOR QUANTITATIVE)
ASSESSMENT OF THE ALIGNED)
POSITION OF TWO MACHINE)
PARTS, WORKPIECES OR THE)
LIKE)

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office: Fax No. (703) 872-9306 on January 7, 2005.


Kathleen M. McManus

SECOND SUBMISSION UNDER 37 CFR § 1.114(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following is presented in conjunction with the previously filed request for filing of an RCE in connection with the above-identified application.

As indicated in the SUBMISSION UNDER 37 CFR § 1.114(a) filed with applicant's RCE request of October 12, 2004, enclosed is the factual declaration that was indicated would be forthcoming, i.e., the appended Declaration of Heinz P. Bloch. This declaration fully supports the positions previously presented by applicant to the Examiner and the issue of obviousness has not properly been evaluated.

In particular, with regard to the issue of the known reflectivity of the commercially available optoelectronic sensors, the Declarant states that

based on my knowledge and experience, the reflectivity of such sensors was never used for alignment determination purposes prior to the invention of the Hermann Application, nor was it recognized that the reflectivity of such sensors was sufficient for that purpose. To the contrary, the reflectivity of such sensors was generally treated as a characteristic which

needed to be suppressed for alignment purposes by the use of an anti-reflectivity coating. (Declaration, paragraph 4).

This declaration evidence is fully supported by the previously submitted point noted by applicant that a search of the USPTO records revealed more than 1000 patents which disclose such antireflective coatings for optoelectronic sensors, while no evidence whatsoever has been provided by the Examiner which would indicate that one of ordinary skill in the art would have recognized that the reflective characteristics of the surface of an optoelectronic sensor, rather than being an undesirable feature (as evidenced by the common use of anti-reflection coatings on such sensors), could be used to advantage.

Furthermore, the Declarant points out the deficiencies in the basis for the Examiner's conclusions of obviousness in paragraph 5 of the Declaration and states that no evidence exists that those working in the alignment field (apart from the present inventor) recognized the fact that sufficient light can be reflected from the surface of a first optoelectronic sensor to be received upon the surface of a properly positioned second optoelectronic sensor so as to enable the second sensor to sense the impinging reflected light and output a signal which accurately represents the position of the reflected light (beam) on the second optoelectronic sensor. In this regard, the Declarant points out those skilled in the art would have had to have:

recognized that the reflectivity of the known optoelectronic sensors as well as their sensitivity would have been suitable for a sufficiently strong light source to be aimed at the first sensor without damaging it and that a sufficient amount of light would be reflected as a beam (not as dispersed light) to be readable at the other sensor in a way that would provide sufficiently accurate results.

Clearly, the Examiner has not demonstrated recognition of these facts without which those of ordinary skill in the art would not have been able to find it obvious to do what the present applicant has done. Still further, as indicated in paragraph 6 of the Declaration, given the noted substantial changes that would be required for implementation for implementation of the modifications necessary to implementation of the present invention in the device of the Hölzl patent, the Declarant states that:


[w]ithout a reason or motivation for making such wholesale changes (which I find to be totally absent from the Hölzl Patent, the Examiner's reasoning, and the state of the art as I am aware of it), it is simply not reasonable to think that those working in the field would find it obvious to change from an established practice to one that had never been previously considered.

Thus, the Declarant unequivocally states in paragraph 7 that, based on his experience (which includes having been an inventor in this field) and the factual evidence, it is his assessment that "one of ordinary skill in the art would not have been able to arrive at a device having the features of the claims of the Hermann Application based on anything objectively derivable from the Hölzl Patent, and the mere existence of commercially available optoelectronic sensors that could be used to practice the invention of the Hermann Patent."

It is submitted that the accompanying Declaration clearly refutes the Examiner's positions and demonstrates the unobviousness of the present invention. Thus, since the Examiner is not free to substitute her opinions for established fact, and since her *prima facie* case of obviousness has been totally rebutted, in the absence of any significant new factual evidence being presented by the Examiner, the outstanding rejection under § 103 must be withdrawn.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

By: 
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